

1 THE HONORABLE TANA LIN
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13 UNITED STATES DISTRICT COURT
14 WESTERN DISTRICT OF WASHINGTON
15 AT SEATTLE

16 WILLIAM F. ABRAMS,
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18 v.
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Plaintiff,

20 UNUM LIFE INSURANCE COMPANY OF
21 AMERICA,
22

Defendant.

23 Case No. 2:21-cv-00980-TL
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**DECLARATION OF MEGAN E. GLOR IN
SUPPORT OF PLAINTIFF'S MOTION FOR
JUDGMENT PURSUANT TO FED. R. CIV.
PRO. 52(a)**

16 I, Megan E. Glor, hereby declare that the following statements are true and based
17 upon personal knowledge:

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19 1. I am one of the lawyers representing Plaintiff William F. Abrams in this case.
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21 2. On December 29, 2021, defendant, through its counsel, provided me a link to a
22 downloadable, numbered copy of the “administrative record” it planned to file with the
23 Court, as documented in Exhibit A.
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25 3. On January 3, 2022, as I reviewed defendant’s 4001-page “administrative record,” I
26 observed that 14 pages of it, attached as Exhibit D, had been redacted. Defendant did not
provide an explanation for its redactions or a privilege log.

1 4. I emailed defendant's counsel on January 3, asking "Why have pages 1188, 1190-1203
 2 been redacted?" Ex. B. I explained:

3 Page 1189 notes "Atty/Client Privileged Communication" with a date of
 4 9/11/20, after Unum denied the claim and before the appeal – this [was] long
 5 before the final decision on review was issued and while the claim was
 6 actively under review by Unum. If you believe these pages are subject to A/C
 7 privilege please explain in light of *Stephan v. Unum Life Ins. Co. of Am.*, 697
 8 F.3d 917, 932-33 (9th Cir. 2012) ("Unum argues that, nevertheless, the
 9 fiduciary exception ought not apply to the documents because of the context
 10 in which they were created. The memoranda, Unum contends, "were all
 11 created after Unum had received correspondence from Stephan's counsel," and
 12 therefore after there was "an indication that the parties may become adverse."
 13 There is no binding precedent in this circuit delineating precisely when the
 14 interests [**36] of a Plan fiduciary and its beneficiary become sufficiently
 15 adverse that the fiduciary exception no longer applies. Courts that have
 16 considered the issue, however, "have repeatedly rejected the argument that the
 17 prospect of post-decisional litigation is enough to overcome the fiduciary
 18 exception." *Allen v. Honeywell Ret. Earnings Plan*, 698 F. Supp. 2d 1197,
 19 1201 (D. Ariz. 2010) (internal quotation marks omitted); *see, e.g., Geissal v.*
 20 *Moore Med. Corp.*, 192 F.R.D. 620, 625 (E.D. Mo. 2000); *Klein*, 806 F. Supp.
 21 2d at 1132-33 (collecting cases). Most courts have held that it is not until after
 22 the final determination — that is, after the final administrative appeal — that
 23 the interests of the Plan fiduciary and the beneficiary diverge for purposes of
 24 application of the fiduciary exception. *See Klein*, 806 F. Supp. 2d at 1132. We
 25 agree with the weight of authority.").

26 *Id.*

1 5. On January 4, 2022, defendant's counsel responded, "Regarding the redacted records, we
 2 will remove the redactions from 1188-1203." Ex. C.

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6. For comparison, Exhibit D contains the 14 redacted pages defendant produced on December 29, 2021 and Exhibit E contains the unredacted version of those documents, which were filed at Dkt. #20, pp. 1190-1203 (“ABRAMS_AR 001190”-“ABRAMS_AR 001203”).

DATED: February 2, 2022, at Portland, Oregon.

s/ Megan E. Glor

Megan E. Glor, (OSB #930178) (*pro hac vice*)
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Portland, OR 97212
Telephone: (503) 223-7400
Email: megan@megannglor.com

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2 **CERTIFICATE OF SERVICE**
3

4 I hereby certify that on the February 2, 2022, I caused the foregoing to be electronically filed with the Clerk
5 of the Court using the CM/ECF system, which will send notification of such filing to the following:
6

- 7 • **Megan E. Glor**
8 megan@megan glor.com, robert@megan glor.com
- 9 • **Eleanor Hamburger**
10 ehamburger@sylaw.com, matt@sylaw.com, stacy@sylaw.com, theresa@sylaw.com
- 11 • **Riley R. Moyer**
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17 theresa@sylaw.com

18 DATED: February 2, 2022

19 s/ Megan E. Glor
20 Megan E. Glor (OSB #930178) (*pro hac vice*)
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